

January 11, 1988

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL
HOME FEDERAL SAVINGS AND LOAN ASSOCIATION
v. U.S. GRANT HOTEL ASSOCIATES, ET AL.

BACKGROUND

In October 1987, the City was requested by CDS-Grant Corp., Home Federal Savings and Loan Association ("Home Federal") and Sybedon Corporation to consider subordinating its six million dollar (\$6,000,000) note secured by a third trust deed to an additional loan of up to one million dollars (\$1,000,000) by Home Federal to CDS-Grant Corp. for operating cash needs of the U.S. Grant Hotel. The matter was considered by the City Council on October 26, 1987. The City Council voted unanimously to deny the request.

Attached as Enclosure (1) to this report is a report from the City Manager dated October 14, 1987 (no. 87-508) which reflects the facts regarding this matter based upon information available to the City Manager at that time. That report also provides background on how the City became a party to this somewhat complicated transaction.

Subsequently on November 19, 1987 the City was served with a civil complaint for foreclosure of deed of trust naming the City and others.

As authorized in a closed session on this matter on October 26, we retained the law firm of Sullivan, Delafield, McDonald and Middendorf to assist in the defense of this case. (Subsequently, this office also authorized the retention of the law firm of Hetland and Hanson to assist in the defense.)

A thorough investigation of our legal position in this matter by the Sullivan and Hetland law firms has resulted in the filing of an answer to the foreclosure complaint and a Cross-complaint for Declaratory Relief and for Marshalling of Assets. These defenses and affirmative claims arise from our belief (based upon

investigation to date) that because of certain actions by Home Federal the conditions for the City's subordination were not met and the City's Deed of Trust therefore remains senior to Home Federal's Deed of Trust. Mr. Sullivan and Mr. Hetland will elaborate orally in more detail with respect to these issues and the question of the filing of the UCC-1 Form.

Following that briefing, we will orally advise you of our mutual recommendations.

Respectfully submitted,

JOHN W. WITT

City Attorney

JWW:CMF:js:613.5(x043.1)

Enclosure (1)

RC-88-3